

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

29926

**FILE:** B-214314**DATE:** December 3, 1984**MATTER OF:** SISA Pharmaceutical Laboratories  
Incorporated**DIGEST:**

1. Discussions were adequate where the agency asked questions of the protester relating to perceived staffing weaknesses in its proposal and offered the protester an opportunity to improve the proposal.
2. Award based on a higher cost, higher technically rated proposal is not objectionable where the contracting officer reasonably determines that the technical difference is significant and the solicitation stated that cost was secondary to technical considerations.

SISA Pharmaceutical Laboratories Incorporated protests the award by the National Institute of Mental Health of a cost-plus-fixed-fee contract to Regis Chemical Company under request for proposals (RFP) No. NIMH-ER-84-0001. The protester complains that the discussions conducted during this procurement were not adequate and that the agency made award to Regis even though the projected cost to the government under SISA's proposal was substantially lower. We deny the protest.

The solicitation sought a contractor for the synthesis of organic chemical and biochemical compounds to be used in mental health research. Offerors were to submit detailed technical proposals describing how the work would be accomplished and business proposals containing projected cost data. The solicitation set forth a 100-point scoring scheme for the evaluation of technical proposals and stated that award would be made to that responsible offeror who could perform the work in the manner most advantageous to the government,

030715

technical and cost factors considered. The solicitation stated that proposed cost was "secondary to quality in this procurement."

The agency received four proposals in response to the RFP. A team of evaluators consisting of agency and non-agency personnel reviewed the technical proposals, noting their strengths and weaknesses. Each evaluator assigned each proposal a technical score. The proposal submitted by SISA received an average score of 74.5; that of Regis averaged 85.3. All of the evaluators judged the SISA proposal to be acceptable, but the consensus among them was that some of the personnel that SISA proposed to use on this contract had insufficient experience with the types of compounds to be synthesized. In addition, although SISA planned to have two experienced chemists available for consultation, the evaluators were concerned about the availability of these persons since SISA offered them at no cost.

The results of the initial evaluation were conveyed to the contracting officer, a competitive range of three was established, and a series of questions was prepared for each offeror in the competitive range based on the concerns expressed by the evaluators. The project manager and a contract specialist then conducted negotiations by reading the prepared questions over the telephone. The agency says that none of the offerors requested that the questions be provided in writing.

Following the submission of best and final offers, the evaluators rescored the proposals with the result that SISA's proposal received an average score of 72 and the proposal from Regis received an average score of 86.8. The evaluators noted that SISA's best and final offer was weak in the same areas as was its initial proposal--staff experience and the possible unavailability of consultants provided at no cost--and that the best and final offer was weakened still further by the substitution of one chemist for another without accompanying sufficient information concerning the experience of the replacement. In addition, although SISA's projected costs were lower than those projected by Regis, the project officer expressed

concern that SISA's costs proposal might not be realistic. Based on these evaluations, the contracting officer determined that the technical disparity between these two proposals was significant and outweighed the apparent cost advantage of the SISA proposal. Award was made to Regis.

The protester contends that the discussions conducted in this case were inadequate because the agency failed to inform it specifically of the perceived weaknesses of its proposal in the area of staffing arrangements and did not afford SISA a reasonable opportunity to correct any such weaknesses. The protester contends further that the award to Regis was not advantageous to the government because SISA was technically competent to perform the contract and offered to do so at a lower projected cost. We find no merit to these contentions.

The applicable regulations provide that, in negotiated procurements, agencies generally must conduct written or oral discussions with all responsible offerors within a competitive range prior to awarding a contract. Federal Procurement Regulations (FPR), 41 C.F.R. § 1-3.805-1(a) (1984). This requirement can be satisfied only when discussions are meaningful, TRS Design & Consulting Services, B-214011, May 29, 1984, 84-1 CPD ¶ 578, which means that negotiators generally should be as specific as practical considerations will permit. Tracor Marine, Inc., B-207285, June 6, 1983, 83-1 CPD ¶ 604; 52 Comp. Gen. 466 (1973). The degree of specificity required in conducting discussions is not constant, however, Joule Technical Corporation, B-197249, Sept. 30, 1980, 80-2 CPD ¶ 231, and is primarily a matter for the procuring agency to determine. Broomall Industries, Inc., B-193166, June 28, 1979, 79-1 CPD ¶ 467. This Office will not question the agency's judgment in this area unless it lacks a reasonable basis. See Arthur D. Little, Inc., B-213686, Aug. 3, 1984, 84-2 CPD ¶ 149. In this regard, we have said that the requirement for meaningful discussions dictates only that the agency proceed in a manner that alerts offerors to perceived weaknesses in their proposals, CRC Systems, Inc., B-207847, May 2, 1983, 83-1 CPD ¶ 462, and have held that agency statements made during discussions that lead offerors into particular areas of their proposals are sufficient to put them on notice that their proposals may

be deficient in those areas. See, for example, Serv-Air, Inc., 57 Comp. Gen. 827, 845 (1978), 78-2 CPD ¶ 223. The procuring agency then must afford all offerors a reasonable opportunity to revise their proposals to satisfy the requirements of the solicitation. See FPR, 41 C.F.R. § 1-3.805-1(b).

In this case, we believe the agency satisfied the requirement to conduct meaningful discussions. As indicated, chief among the concerns of the evaluators were the lack of experience of the junior chemists and the possible unavailability of the more senior chemists that SISA named in its proposal. Consequently, the agency's negotiator posed the following questions, among others, to the protester:

- "1. The evaluation panel noted that the proposed staff does not appear to have adequate bench experience in the synthesis of the compounds required under this project. How will problems that arise during the performance of this contract in the synthesis of these compounds be resolved?
- "2. Since Drs. Razdan and Meltzer are proposed at no cost, what assurances can you provide that they will be available for the 1176 hours of consultation proposed?"

In our view, these questions were sufficient to alert the protester that the agency was concerned about the experience of the staff and the availability of the consultants. Although the agency apparently did not explicitly characterize these concerns as "weaknesses" or "deficiencies," there is no requirement for it to have done so. See Broomall Industries, Inc., supra. SISA should have realized that the questions asked were based on perceived weaknesses in its proposal and therefore should have resolved these issues in its best and final offer. Instead, the protester's best and final offer merely restated the qualifications of its proposed staff, substituted a chemist for whom no resume was provided, and

stated that Drs. Razdan and Meltzer would submit signed time sheets on a monthly basis. Apparently, the evaluators found these responses insufficient to satisfy their concerns, and we cannot say that the evaluators' judgements in this regard were unreasonable. In short, the discussions conducted with SISA were meaningful since the agency informed the firm of areas in its proposal that the agency considered weak and afforded it an opportunity to improve the proposal.

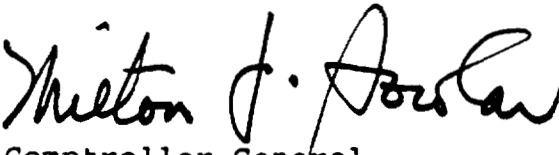
The protester also contends that the award to Regis was improper because its proposal was not the most advantageous to the government. The protester contends that its proposal was more advantageous because its projected cost to the government of \$620,153 was lower than the \$765,373 projected cost of the Regis proposal. This contention is also without merit.

There is no requirement that an agency award a cost-type contract on the basis of the lowest proposed costs. Mitek Systems, Inc.-Request for Reconsideration, B-208786.3, May 10, 1983, 83-1 CPD ¶ 494. Moreover, although cost may not totally be ignored, System Development Corporation, B-213726, June 6, 1984, 84-1 CPD ¶ 605, procurement officials have broad discretion in determining the manner and extent to which they will make use of technical and cost evaluation results. Columbia Research Corp., 61 Comp. Gen. 194 (1982), 82-1 CPD ¶ 8. An agency may make cost versus technical tradeoffs, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the established evaluation factors. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. The determining element is the considered judgment of the procurement officials concerning the significance of the difference in technical merit among the proposals. Columbia Research Corp., supra. This Office will question that judgment only upon a clear showing of unreasonableness. American Coalition of Citizens with Disabilities, Inc., B-205191, Apr. 6, 1982, 82-1 CPD ¶ 318.

In this case, the solicitation stated that award would be made to the offeror who could perform in a manner most

advantageous to the government and that technical considerations were more important than cost. The contracting officer determined that the higher rated proposal submitted by Regis was significantly superior to that submitted by SISA. In addition, he questioned the realism of SISA's costs primarily because of its proposed overhead rate. Although SISA contends that this realism concern is, at least in part, unjustified, the contracting officer states that even without this concern, the technical superiority of the Regis proposal outweighed the lower costs proposed by SISA and justified an award to Regis. This determination does not appear to be either unreasonable or inconsistent with the terms of the solicitation. Thus, we have no reason to question it. See Grey Advertising, Inc., supra.

We deny the protest.

*for*   
Comptroller General  
of the United States